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SUBJECT: TELECOM IN CONFUSION OVER FOREIGN OWNERSHIP REGS

¶1. Summary: Thai telecom companies are nervously studying newly proposed foreign ownership regulations that could force their ostensible foreign owners to divest shares at a serious discount. The Minister of Finance has provided conflicting information as to how telecommunications will be handled under the new amendments. Telecom providers may be exempted from the new, stricter definition of foreign ownership, but would still likely be required to restructure their ownership arrangements to eliminate "nominee" structures that were technically illegal, but common practice, under the old law. End Summary.

¶2. The newly proposed amendments to the Foreign Business Act (FBA) that are roiling the foreign business community in Thailand have sent telecommunications companies scrambling to see how the new rules will affect their business. Local telcos have been under the gun since former Prime Minister Thaksin's controversial sale of Shin Corporation to Singapore-owned Temasek Holdings in January 2006. The tax-free sale of Thaksin's telecommunications empire, including AIS, Thailand's largest mobile provider, to a foreign company caused an uproar that sparked investigations into Shin and other companies that used complicated ownership structures to get around Thai laws restricting foreign majority control. Eager to show justification for their September coup against Thaksin, the new government continued the investigations and devised these new amendments to take a final swipe at Shin and Temasek, and to close the previously available avenues that allowed foreigners to take control of businesses that many Thais consider national assets. Caught up in the tumult over Shin is United Communications (UCOM), owner of the second largest mobile provider DTAC, which Norwegian telco Telenor took over in a deal similar to Shin's in late 2005.

¶3. Most observers agree that the FBA amendments will affect the telecom companies, but it is not clear to what extent or what companies will need to do to comply with the new rules. The telecom industry in Thailand is governed by the Telecommunications and Business Act of 2001 and not by the FBA; however, an amendment to the Telecom Act in 2006 expressly linked definition of an alien to that in the FBA. Therefore, telecom companies in Thailand face the same restrictions on foreign ownership as other service industries, limiting foreign control to 49 percent.

¶4. Telecommunications services are not mentioned in the Foreign Business Act's list of restricted services, but Deputy PM Pridiyathorn reportedly clarified that telecom would be considered as a business under List 3, which includes service industries closed to foreign control because Thai nationals are not yet ready to compete. Under the new amendments, telcos would presumably be grandfathered and allowed to continue operations, though importantly any nominee structures would still need to be dismantled.

¶5. Adding to the confusion, a section of the amendments states that

companies "under investigation or trial procedure" will not be exempted from restructuring requirements like other companies on List 3. Since the Ministry of Commerce initiated investigations on the nominee structures for both Shin and UCOM (and 13 other companies as well), it would seem neither would be eligible for the exemption. However, Dr. Deunden Nikomborirak, Research Director for the Thailand Development Research Institute and a member of the advisory committee for the new amendments, said the language on investigations was discriminatory and predicted that the National Legislative Assembly would eliminate that section from the final version of the amendments.

¶6. The issue for Shin is whether a holding company known as Kularb Kaew that together with Siam Commercial Bank controls a commanding share of Shin (through yet another holding company). In dispute is whether the owners of Kularb Kaew are genuine investors or are acting as a "nominee" company, simply holding shares for the foreign owner, Temasek, and providing a Thai face to what is essentially a foreign-owned enterprise. While an official investigation is still ongoing, the Ministry of Commerce made a preliminary conclusion last year that Kularb Kaew was in fact a nominee. If so, under the draft amendments, Shin would be considered a foreign company and be required to report their foreign status within 90 days from the effective date of the law and restructure their shareholdings within one year to create a genuine Thai majority ownership. Temasek would then either have to make adjustments to redefine Kularb Kaew as a legitimate investor, or find other buyers for the approximately 15 percent interest that Kularb Kaew supposedly controls. Any sell down would be on the cheap: Shin's stock has already fallen 20 percent in the last month and by over one half since the sale to Temasek last January. Share prices would likely have to fall further to unload such a substantial share on the market.

¶7. For its part, Telenor has said publicly it would willingly comply with the legal changes if its ownership structure is found to

be in violation. However, Sigve Brekke, CEO of DTAC and UCOM, told the press the new policy was still unclear and it was too early to tell if UCOM was in violation, but said he was confident that their shareholding structure could withstand scrutiny. Temasek and Shin have been notably silent and have made no public statements on the new laws. Temasek's Singapore-based director of Thailand business told Econoff their lawyers were examining the amendments, but so far "couldn't make sense of it."

¶8. Comment: At this point the draft amendment's political purpose is reflected in their lack of lawyer's polish. Those targeted by the new laws are still unsure if they are affected or not. Until the RTG comes up with a clear definition of "nominee" it will be difficult for many foreign firms operating in Thailand's services sector to know what action they need to take. End Comment.